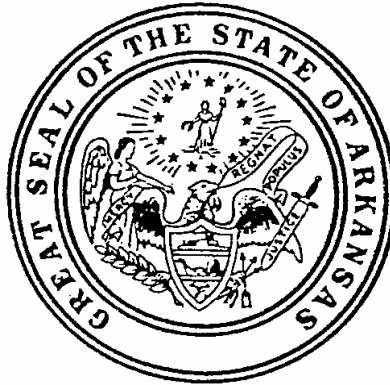


# **Model Rules Of Procedure**

*for*

## **Regulatory and Licensing Agencies**



**Published Pursuant to Act 1648 of 2001  
Mike Beebe, Attorney General  
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# **MODEL RULES FOR REGULATORY AND LICENSING AGENCIES**

## **INTRODUCTION**

Act 1648 of 2001 directs the Attorney General to publish model rules of procedure for new state agencies. These rules address matters that are common to licensing boards. Because they have been drafted for general application, each agency is expected to make modifications to fit its particular needs and circumstances.

## **STATEMENT OF ORGANIZATION AND OPERATION**

### **COMMENT**

*The agency will have available for public inspection a written document or documents that describe the organization of the agency and give information about its operations. A.C.A. §25-15-203. The Statement of Organization should identify the act or acts that created the agency, referring to the act by number and year as well as by its Arkansas Code citation and any other legislation over which the agency has regulatory authority. If there are divisions, departments, or other sub-units, the statement should describe assigned functions, duties, and responsibilities, as well as the positions with responsibilities in each of these areas. The Statement should contain instructions on how to contact the agency for general information, to file a Freedom of Information Act request, to request an investigation, and/or to file a complaint.*

## **SUGGESTED FORMAT**

### **I.**

#### **STATEMENT OF ORGANIZATION AND OPERATIONS**

The **[name of agency]** is an agency of state government created by **[Act (number and year)]**, Ark. Code Ann. **[citation]**. The legislature has delegated to the agency regulatory authority over **[insert description of regulatory authority]** and power to oversee the licensure of **[brief description of licenses issued by agency]**. Ultimate authority for the operation of the agency is in a **[board or commission]**. The individual charged with the day-to-day operations is referred to as **[director, commissioner, other title]**, who is selected by the **[board, commission, the governor]**. From time to time, the **[board or commission]** promulgates **[rules/regulations]**.

For administrative purposes, the agency is comprised of several **[divisions, departments, sections]**. (The document should continue with a brief description or overview or the work assignments of subdivisions of the agency.)

## INFORMATION FOR PUBLIC GUIDANCE

### COMMENT

*The Arkansas Administrative Procedure Act, A.C.A. §25-15-201 et. seq. and Freedom of Information Act, A.C.A. §25-19-101, together, require that agencies have information concerning the operation of the agency available to the public.*

### SUGGESTED FORMAT

#### II.

## INFORMATION FOR PUBLIC GUIDANCE

The agency makes available a list of persons holding certain responsibilities for handling FOIA requests, licensing questions, and complaints against licensees so that the public may obtain information about the agency or make submissions or requests. The names, mailing addresses, telephone numbers, and electronic addresses can be obtained from the agency's office or Web site.

The agency has a list of official forms used by the agency and a list of all formal, written statements of policy and written interpretative memoranda, and orders, decisions and opinions resulting from adjudications, which may be obtained from the agency's office or Web site.

Copies of all forms used by the agency, written statements of policy and written interpretative memoranda, and all orders issued by the agency may be obtained from the agency's office.

## GENERAL ORGANIZATION

### COMMENT

*Each agency is required to adopt, as a rule, a description of its organization and rules of practice.*

### SUGGESTED FORMAT

#### III.

## GENERAL ORGANIZATION

A. The officers of the agency will be **[names of officers]**. Election of officers will held **[annually/bi-annually]** at **[time of election]**. These officers shall perform the duties prescribed by applicable law, this rule, and the parliamentary authority adopted by the agency.

**B.** The business of the agency will be conducted in public meetings pursuant to Robert's Rules of Order. All meetings will be conducted in conformity with the Arkansas Freedom of Information Act. Regular meetings will be held **[frequency]**. Special meetings will be held on the call of the Chairman or **[number]** Board members.

**C.** A quorum for the transaction of business is **[majority of number of voting members, or other numbers specified by statute]**.

**D.** The agency may create standing and ad hoc committees. The agency **[Chairman/ President]** will select members of committees. A quorum for the transaction of committee business is a majority of the number of voting members of the committee. (If statutes require a different number for a quorum, that rule should be inserted at this point.)

**E.** The **[title]** will prepare the agenda for regular and special meetings. The agenda will be distributed to agency members and made available to the public in advance of the meeting. The agenda should state with specificity the items that will be considered at a meeting, hearing, or workshop. The agenda should include the following topics as applicable :

1. The call to order;
2. Review of minutes;
3. Old business;
4. New business;
5. Other business;
6. Adjudicatory hearings;
7. Rule-making hearings; and
8. Public comment.

The order of the agenda items is intended to be flexible and may be adjusted to meet the needs of the agency. Additionally, the agenda may be amended by appropriate motion.

## **RULE-MAKING**

### **COMMENT**

*Each agency that has been authorized to adopt rules or regulations should have a section regarding the rule-making process. In Arkansas practice, the terms “rule” and “regulation” are used interchangeably. This section should cover the entire process from initiating to filing the final rule with the Secretary of State and should specify the manner in which the rule-making process is initiated. It should also address the required notifications, public hearing, the decisional process, and legislative review.*

### **SUGGESTED FORMAT**

#### **IV.**

### **RULE-MAKING**

#### **A. AUTHORITY**

The agency has been authorized by the Legislature to promulgate rules. **[insert appropriate statutory citation]**. The agency follows the procedural requirements of the Arkansas Administrative Procedure Act, in particular A.C.A. §25-15-203 and §25-15-204. Additionally, the agency is required to abide by the provisions of A.C.A. §10-3-309.

#### **B. INITIATION OF RULE-MAKING**

The process of adopting a new rule or amending or repealing an existing rule (hereinafter referred to “rule-making”) may be initiated by request of the governing body that the staff submit proposed drafts. Additionally, staff of the agency may request permission of the agency to initiate rule-making. Third persons outside the agency may petition for the issuance, amendment, or repeal of any rule.

#### **C. PETITION TO INITIATE RULE-MAKING**

Third parties may initiate rule-making to adopt, amend, or repeal a rule by filing a petition with the agency to initiate rule-making. The petition must contain the name, address, and telephone number of the petitioner, the specific rule or action requested, the reasons for the rule or action requested, and facts showing that the petitioner is regulated by the agency or has a substantial interest in the rule or action requested.

The petition to initiate rule-making shall be filed with the agency **[insert title]**.

Within thirty (30) days after submission of the petition, the agency will either deny the petition, stating its reasons in writing, or will initiate rule-making. A special meeting will be called if necessary to meet this time frame.

**D. PRE-FILING WITH THE BUREAU OF LEGISLATIVE RESEARCH**

Thirty (30) days before the public-comment period ends, the agency will file with the Bureau of Legislative Research the text of the proposed rule or amendment as well as a financial impact statement and a Bureau of Legislative Research questionnaire as provided by A.C.A. §10-3-309.

**E. PUBLIC INPUT**

1. Before finalizing language of a proposed new rule or an amendment to, or repeal of, an existing rule, the agency will receive public input through written comments and/or oral submissions. The agency will designate in its public notice the format and timing of public comment.

2. Any public hearing will provide affected persons and other members of the public a reasonable opportunity for presentation of evidence, arguments, and oral statements within reasonable conditions and limitations imposed by the agency to avoid duplication, irrelevant comments, unnecessary delay, or disruption of the proceedings.

3. The agency chair, any member of the agency, or any person designated by the agency may preside at the public hearing. The agency must ensure that the agency personnel responsible for preparing the proposed rule or amendment are available, and will notify third parties initiating rule changes to be available to explain the proposal and to respond to questions or comments regarding the proposed rule.

4. The agency must preserve the comments made at the public hearing by a certified court reporter or by recording instruments.

5. Any person may submit written statements within the specified period of time. All timely, written statements will be considered by the agency and be made a part of the rule-making record.

**F. NOTICE OF RULE-MAKING**

The agency will give notice of proposed rule-making to be published pursuant to A.C.A. §25-15-204. The notice will set any written comment period and will specify the time, date, and place of any public hearing.

**G. THE DECISION TO ADOPT A RULE**

1. The agency will not finalize language of the rule or decide whether to adopt a rule until the period for public comment has expired.

2. Before acting on a proposed rule, the agency will consider all of the written submissions and/or oral submissions received in the rule-making proceeding or any memorandum summarizing such oral submissions, and any regulatory analysis or fiscal impact statement issued in the rule-making proceedings.

3. The agency may use its own experience, specialized knowledge, and judgment in the adoption of a rule.

#### **H. VARIANCE BETWEEN ADOPTED RULE AND PUBLISHED NOTICE OF PROPOSED RULE**

1. The agency may not adopt a rule that differs from the rule proposed in the published notice of the intended rule-making on which the rule is based unless:

- a. The final rule is in character with the original scheme and was a logical outgrowth of the notice and comments stemming from the proposed rule, or
- b. The notice fairly apprised interested persons of the subject and the issues that would be considered so that those persons had an opportunity to comment.

2. In determining whether the final rule is in character with the original scheme and was a logical outgrowth of the notice and comments, and that the notice of intended rule-making provided fair warning that the outcome of that rule-making proceeding could be the rule in question, the agency must consider the following factors:

- a. The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests; and
- b. The extent to which the subject matter of the rule or issues determined by the rule are different from the subject matter or issues contained in the notice of intended rule-making; and
- c. The extent to which the effects of the rule differ from the effects of the proposed rule contained in the notice of intended rule-making.

#### **I. CONCISE STATEMENT OF REASONS**

1. When requested by an interested person, either prior to the adoption of a rule or within thirty (30) days after its adoption, the agency shall issue a concise statement of the principal reasons for and against its adoption of the rule. Requests for such a statement must be in writing and be delivered to **[specify office or job title]**. The request

should indicate whether the statement is sought for all or only a specified part of a rule. A request will be considered to have been submitted on the date on which it is received by the agency.

2. The concise statement of reasons must contain:

- a. The agency's reasons for adopting the rule;
- b. An indication of any change between the text of the proposed rule and the text of the rule as finally adopted, with explanations for any such change; and
- c. The principal reasons urged in the rule-making procedure for and against the rule, and the agency's reasons for overruling the arguments made against the rule.

## **J. CONTENTS**

The agency shall cause its rules to be published and made available to interested persons. The publication must include:

- 1. The text of the rule; and
- 2. A note containing the following:
  - (a) The date(s) the agency adopted or amended the rule;
  - (b) The effective date(s) of the rule;
  - (c) Any findings required by any provisions of law as a prerequisite to adoption for effectiveness of the rule; and
  - (d) Citation to the entire specific statutory or other authority authorizing the adoption of the rule;
- 3. The publication of the rule(s) must state the date of publication.

## **K. FORMAT**

The published rules of the agency will be organized substantially in the following format:

- I. Statement of Organization and Operations
- II. Information for Public Guidance
- III. General Organization
- IV. Rule-making

- V. Emergency Rule-making
- VI. Declaratory Orders
- VII. Adjudicative Hearings
- VIII. Licensing,
- IX. Et seq. Substantive rules and other rules of Agency

#### **L. INCORPORATION BY REFERENCE**

By reference in a rule, the agency may incorporate all or any part of a code, standard, rule, or other matter if the agency finds that copying the matter in the agency's rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the agency rule must fully and precisely identify the incorporated matter by title, citation, date, and edition, if any; briefly indicate the precise subject and general contents of the incorporated matter; and state that the rule does not include any later amendments or editions of the incorporated matter. The agency may incorporate such a matter by reference in a proposed or adopted rule only if the agency makes copies of the incorporated matter readily available to the public. The rules must state how and where copies of the incorporated matter may be obtained at cost from this agency, and how and where copies may be obtained from an agency of the United States, this state, another state, or the organization, association, or persons originally issuing that matter. The agency must retain permanently a copy of any materials incorporated by reference in a rule of the agency.

#### **M. FILING**

1. After the agency formally adopts a new rule or amends a current rule or repeals an existing rule, and after the rule change has been reviewed by the Legislative Counsel, the staff will file final copies of the rule with the Secretary of State, the Arkansas State Library, and the Bureau of Legislative Research, or as otherwise provided by A.C.A. §25-15-204(d).
2. Proof of filing a copy of the rule, amendment, or repeal with the Secretary of State, the Arkansas State Library, and the Bureau of Legislative Research will be kept in a file maintained by **[describe office or title of person keeping these records]**.
3. Notice of the rule change will be posted on the agency Web page. (if available)

### **EMERGENCY RULE-MAKING**

#### **Comment**

*The Arkansas Administrative Procedure Act provides at A.C.A. §25-15-204(b) and (e) for emergency rule-making.*

## **SUGGESTED FORMAT**

### **V.**

#### **EMERGENCY RULE-MAKING**

##### **A. REQUEST FOR EMERGENCY RULE-MAKING**

The proponent of a rule may request the agency to adopt an emergency rule. In addition to the text of the proposed rule or amendment to an existing rule and any other information required by Rule IV (C), the proponent will provide a written statement setting out the facts or circumstances that would support a finding of imminent peril to the public health, safety, or welfare.

##### **B. FINDING OF AN EMERGENCY**

Upon receipt of the written statement requesting an emergency rule-making and documents or other evidence submitted in support of the assertion that an emergency exists, the agency will make an independent judgment as to whether the circumstances and facts constitute an imminent peril to the public health, safety, or welfare requiring adoption of the rule upon fewer than 30 days notice. If the agency determines that the circumstances warrant emergency rule-making, it will make a written determination that sets out the reasons for the agency's finding that an emergency exists. Upon making this finding, the agency may proceed to adopt the rule without any prior notice or hearing, or it may determine to provide an abbreviated notice and hearing.

##### **C. EFFECTIVE DATE OF EMERGENCY RULE**

The emergency rule will be effective immediately upon filing, or at a stated time less than ten (10) days thereafter, if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The agency will file with the rule its written findings justifying the determination that emergency rule-making is appropriate and, if applicable, the basis for the effective date of the emergency rule being less than ten days after the filing of the rule pursuant to A.C.A. §25-15-204(e). The agency will take appropriate measures to make emergency rules known to persons who may be affected by them.

#### **DECLARATORY ORDERS**

##### **COMMENTS**

*The Administrative Procedure Act requires agencies of state government to provide by rule for the filing and prompt disposition for declaratory orders as to the applicability of any rule, statute, or order enforced by the agency. A declaratory order made by an agency holds*

*the same status as an order entered after administrative adjudication.*  
(A.C.A. §25-15-206 .)

## **SUGGESTED FORMAT**

### **VI.**

## **DECLARATORY ORDERS**

### **A. PURPOSE AND USE OF DECLARATORY ORDERS**

A declaratory order is a means of resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory order may be used only to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory order is not the appropriate means for determining the conduct of another person or for obtaining a policy statement of general applicability from an agency. A petition or declaratory order must describe the potential impact of statutes, rules, or orders upon the petitioner's interests.

### **B. THE PETITION**

The process to obtain a declaratory order is begun by filing with **[insert office]** a petition that provides the following information:

1. The caption shall read: Petition for Declaratory Order Before **[name of agency]**.
2. The name, address, telephone number, and facsimile number of the petitioner.
3. The name, address, telephone number, and facsimile number of the attorney of the petitioner.
4. The statutory provision(s), agency rule(s), or agency order(s) on which the declaratory order is sought.
5. A description of how the statutes, rules, or orders may substantially affect the petitioner and the petitioner's particular set of circumstances, and the question or issue on which petitioner seeks a declaratory order.
6. The signature of the petitioner or petitioner's attorney.
7. The date.
8. Request for a hearing, if desired.

### **C. AGENCY DISPOSITION**

1. The agency may hold a hearing to consider a petition for declaratory statement. If a hearing is held, it shall be conducted in accordance with A.C.A. §25-15-208 and §25-15-213, and the agency's rules for adjudicatory hearings.

2. The agency may rely on the statements of fact set out in the petition without taking any position with regard to the validity of the facts. Within ninety (90) days of the filing of the petition, the agency will render a final order denying the petition or issuing a declaratory order.

## **ADJUDICATIVE HEARINGS**

### **COMMENT**

*Hearings to revoke a license or permit or to impose a civil penalty are adjudicative hearings. An agency acts in a quasi-judicial capacity when it conducts an adjudicative hearing.*

*The Arkansas Administrative Procedure Act (APA) provides the basic framework for the conduct of adjudicative hearings. Using the APA as a framework, this rule provides detailed procedures for hearings.*

## **SUGGESTED FORMAT**

### **VII.**

## **ADJUDICATIVE HEARINGS**

### **A. SCOPE OF THIS CHAPTER**

This chapter applies in all administrative adjudications conducted by the [agency name]. This procedure is developed to provide a process by which the agency formulates orders (for example, an order revoking a license to practice, or imposing civil penalties).

### **B. PRESIDING OFFICER**

The [Board/Commission] shall preside at the hearing or may designate one or more members of the [Board/Commission] or one or more examiners, referees, or hearing officers to preside at a hearing.

### **C. APPEARANCES**

- (1) Any party appearing in any agency proceeding has the right, at his or her own expense, to be represented by counsel.
- (2) The respondent may appear on his or her own behalf.
- (3) Any attorney representing a party to an adjudicatory proceeding must file notice of appearance as soon as possible.
- (4) Service on counsel of record is the equivalent of service on the party represented.
- (5) On written motion served on the party represented and all other parties of record, the presiding officer may grant counsel of record leave to withdraw for good cause shown.

### **D. CONSOLIDATION**

If there are separate matters that involve similar issues of law or fact, or identical parties, the matters may be consolidated if it appears that consolidation would promote the just, speedy, and inexpensive resolution of the proceedings, and would not unduly prejudice the rights of a party.

### **E. NOTICE TO INTERESTED PARTIES**

If it appears that the determination of the rights of parties in a proceeding will necessarily involve a determination of the substantial interests of persons who are not parties, the presiding officer may enter an order requiring that an absent person be notified of the proceeding and be given an opportunity to be joined as a party of record.

### **F. SERVICE OF PAPERS**

Unless the presiding officer otherwise orders, every pleading and every other paper filed for the proceeding, except applications for witness subpoenas and the subpoenas, shall be served on each party or the party's representative at the last address of record.

### **G. INITIATION & NOTICE OF HEARING**

1. An administrative adjudication is initiated by the issuance by the agency of a notice of hearing.

2. The notice of hearing will be sent to the respondent by U.S. Mail, return receipt requested, delivery restricted to the named recipient or his agent. Notice shall be sufficient when it is so mailed to the respondent's latest address on file with the agency.

3. Notice will be mailed at least [**number**] days before the scheduled hearing.

4. The notice will include:

a. A statement of the time, place, and nature of the hearing;

b. A statement of the legal authority and jurisdiction under which the hearing is to be held; and

c. A short and plain statement of the matters of fact and law asserted.

## **H. MOTIONS**

All requests for relief will be by motion. Motions must be in writing or made on the record during a hearing. A motion must fully state the action requested and the grounds relied upon. The original written motion will be filed with the agency. When time allows, the other parties may, within seven (7) days of the service of the written motion, file a response in opposition. The presiding officer may conduct such proceedings and enter such orders as are deemed necessary to address issues raised by the motion. However, a presiding officer, other than the [**Board/Commission**], will not enter a dispositive order unless expressly authorized in writing to do so.

## **I. ANSWER**

A respondent may file an answer.

## **J. DISCOVERY**

1. Upon written request, the agency will provide the information designated in A.C.A. §25-15-208(a)(3).

2. Such requests should be received by the agency at least 10 days before the scheduled hearing.

## **K. CONTINUANCES**

1. The [**Title**] may grant a continuance of hearing for good cause shown. Requests for continuances will be made in writing. The request must state the grounds to be considered and be made as soon as practicable and, except in cases of emergencies, no later than five (5) days prior to the date noticed for the hearing. In determining whether to grant a continuance, the [**Title**] may consider:

- (a) Prior continuances;
- (b) The interests of all parties;
- (c) The likelihood of informal settlements;
- (d) The existence of an emergency;
- (e). Any objection;
- (f) Any applicable time requirement;
- (g) The existence of a conflict of the schedules of counsel, parties, or witnesses;
- (h) The time limits of the request; and
- (i) Other relevant factors.

2. The [**Title**] may require documentation of any grounds for continuance.

#### **L. HEARING PROCEDURES**

1. The presiding officer presides at the hearing and may rule on motions, require briefs, and issue such orders as will ensure the orderly conduct of the proceedings; provided, however, any presiding officer other than the [**Board/Commission**] shall not enter a dispositive order or proposed decision unless expressly authorized in writing to do so.

2. All objections must be made in a timely manner and stated on the record.

3. Parties have the right to participate or to be represented by counsel in all hearings or pre-hearing conferences related to their case.

4. Subject to terms and conditions prescribed by the Administrative Procedure Act, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and, upon request by the agency, may submit briefs and engage in oral argument.

5. The presiding officer is charged with maintaining the decorum of the hearing and may refuse to admit, or may expel, anyone whose conduct is disorderly.

## **M. ORDER OF PROCEEDINGS**

The presiding officer will conduct the hearing in the following manner:

1. The presiding officer will give an opening statement, briefly describing the nature of the proceedings.
2. The parties are to be given the opportunity to present opening statements.
3. The parties will be allowed to present their cases in the sequence determined by the presiding officer.
4. Each witness must be sworn or affirmed by the presiding officer, or the court reporter, and be subject to examination and cross-examination as well as questioning by the **[Board/Commission]**. The presiding officer may limit questioning in a manner consistent with the law.
5. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

## **N. EVIDENCE**

1. The presiding officer shall rule on the admissibility of evidence and may, when appropriate, take official notice of facts in accordance with all applicable requirements of law.
2. Stipulation of facts is encouraged. The agency may make a decision based on stipulated facts.
3. Evidence in the proceeding must be confined to the issues set forth in the hearing notice, unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence outside the scope of the notice, over the objection of a party who did not have actual notice of those issues, that party, upon timely request, will receive a continuance sufficient to prepare for the additional issue and to permit amendment of pleadings.
4. A party seeking admission of an exhibit must provide **[number of]** copies of each exhibit at the hearing. The presiding officer must provide the opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. All exhibits admitted into evidence must be appropriately marked and be made part of the record.
5. Any party may object to specific evidence or may request limits on the scope of the examination or cross-examination. A brief statement of the grounds upon which it is based shall accompany such an objection. The objection, the ruling on the

objection, and the reasons for the ruling will be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve the ruling until the written decision.

6. Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony will briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

7. Irrelevant, immaterial, and unduly repetitive evidence will be excluded. Any other oral or documentary evidence, not privileged, may be received if it is of a type commonly relied upon by reasonably prudent men and women in the conduct of their affairs.

8. Reasonable inferences. The finder of fact may base its findings of fact upon reasonable inferences derived from other evidence received.

#### **O. DEFAULT**

If a party fails to appear or participate in an administrative adjudication after proper service of notice, the agency may proceed with the hearing and render a decision in the absence of the party.

#### **P. SUBPOENAS**

(This section is only applicable to agencies having statutory subpoena power)

1. At the request of any party, the agency shall issue subpoenas for the attendance of witnesses at the hearing. The requesting party shall specify whether the witness is also requested to bring documents and reasonably identify said documents.

2. A subpoena may be served by any person specified by law to serve process or by any person who is not a party and who is eighteen (18) years of age or older. Delivering a copy to the person named in the subpoena shall make service. Proof of service may be made by affidavit of the person making service. The party seeking the subpoena shall have the burden of obtaining service of the process and shall be charged with the responsibility of tendering appropriate mileage fees and witness fees pursuant to Rule 45, Arkansas Rules of Civil Procedure. The witness must be served at least two days prior to the hearing. For good cause, the agency may authorize the subpoena to be served less than two days before the hearing.

3. Any motion to quash or limit the subpoena shall be filed with the agency and shall state the grounds relied upon.

**Q. RECORDING THE PROCEEDINGS**

The responsibility to record the testimony heard at a hearing is borne by the agency. Upon the filing of a petition for judicial review, the agency will provide a verbatim transcript of testimony taken before the agency.

**R. FACTORS TO BE CONSIDERED IN IMPOSING SANCTIONS**

In addition to any other considerations permitted by [the agency's organic act], if applicable, the agency in imposing any sanction may consider the following:

1. The nature and degree of the misconduct for which the licensee is being sanctioned.
2. The seriousness and circumstances surrounding this misconduct.
3. The loss or damage to clients or others.
4. The assurance that those who seek similar professional services in the future will be protected from the type of misconduct found.
5. The profit to the licensee.
6. The avoidance of repetition.
7. Whether the conduct was deliberate, intentional, or negligent.
8. The deterrent effect on others.
9. The conduct of the individual during the course of the disciplinary proceeding.
10. The professional's prior disciplinary record, including warnings.
11. Matters offered by the professional in mitigation or extenuation, except that a claim of disability or impairment resulting from the use of alcohol or drugs may not be considered unless the professional demonstrates that he or she is successfully pursuing in good faith a program of recovery.

**S. FINAL ORDER**

The agency will serve on the respondent a written order that reflects the action taken by the agency. The order will include a recitation of facts found based on testimony and other evidence presented and reasonable inferences derived from the evidence pertinent to the issues of the case. It will also state conclusions of law and directives or other disposition entered against or in favor of the respondent.

The order will be served personally or by mail on the respondent. If counsel represents respondent, service of the order on respondent's counsel shall be deemed service on the respondent.

## **LICENSING**

### **COMMENT**

*The legislature has decided that some professions and businesses may be carried out only by persons and firms licensed by the state. It is important that these persons and businesses, as well as the general public, understand how the agency handles license applications and disciplinary action against licensed professionals. This section also addresses reinstatement of licenses that have been suspended and applications for licenses from persons whose licenses have been revoked.*

## **SUGGESTED FORMAT**

### **VIII.**

#### **LICENSING**

##### **A. GENERAL**

All agency action regarding licensure shall be governed by the **[Here insert the statutory sections governing licensing appropriate to the agency]** and, when applicable, A.C.A. §§25-15-208 to 213.

##### **B. REQUIREMENT TO KEEP CURRENT ADDRESSES ON FILE**

All persons holding a license or permit issued by the agency are required to provide the agency with information so that the agency can remain in contact and provide notice of complaints and/or hearings. The licensee or permit holder is required to provide written notice to the board of any change in business and/or residence address within 10 working days of the change. Service of notices of hearing sent by mail will be addressed to latest address on file with the agency.

##### **C. REVIEW OF APPLICATION**

The application and supporting documentation will be reviewed by **[staff, a licensing committee, the board, or other described person]**. The agency will inform the applicant in writing if it determines that the application is incomplete, and will specify why the application is incomplete. When a completed application, a supplemental application, or the requested information is returned, the agency will reinitiate action on the application for license. If all requirements are met, a license will be issued. [If all requirements are met, the applicant will be allowed to take the licensing examination.]

#### **D. DENIAL OF LICENSE**

1. If a preliminary determination is made that the application should be denied, the agency will inform the applicant of the opportunity for a hearing on the application.

2. The grounds or basis for the proposed denial of a license will be set forth in writing by the agency. Any hearing on the denial of a license will be conducted in accordance with A.C.A. § 25-15-208 and A.C.A. § 25-15-213, and unless otherwise provided by law, the applicant has the burden of establishing entitlement to the license.

#### **E. SUSPENSION, REVOCATION, ANNULMENT OR WITHDRAWAL**

1. Prior to the entry of a final order to suspend, revoke, annul, or withdraw a license, or to impose other sanctions upon a licensee, the agency will serve the licensee a notice of hearing in the manner set out in A.C.A. § 25-15-208 and Rule VII (G).

2. The agency has the burden of proving the alleged facts and violations of law stated in the notice.

#### **F. EMERGENCY ACTION**

1. If the agency finds that the public health, safety, or welfare imperatively requires emergency action and incorporates that finding in its order, the agency can summarily suspend, limit, or restrict a license. The notice requirement in VII (G) does not apply and must not be construed to prevent a hearing at the earliest time practicable.

2. Emergency Order:

An emergency adjudicative order must contain findings that the public health, safety, and welfare imperatively require emergency action to be taken by the agency. The written order must include notification of the date on which agency proceedings are scheduled for completion.

Written Notice. The written emergency adjudicative order will be immediately delivered to persons who are required to comply with the order. One or more of the following procedures will be used:

- a. Personal delivery;
- b. Certified mail, return receipt requested, to the last address on file with the agency;
- c. First class mail to the last address on file with the agency;

- d. Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that agency orders be sent by fax and has provided a fax number for that purpose.
  - e. Oral notice. Unless the written emergency order is served by personal delivery on the same day that the order issues, the agency shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.
3. Unless otherwise provided by law, within 10 days after emergency action taken pursuant to paragraph E1 of this rule, the agency must initiate a formal suspension or revocation proceeding.

#### **G. VOLUNTARY SURRENDER OF LICENSE**

The licensee, in lieu of formal disciplinary proceedings, may offer to surrender his or her license, subject to the agency's determination to accept the proffered surrender, rather than conducting a formal disciplinary proceeding.

#### **H. DUTY OF A SANCTIONED PROFESSIONAL**

In every case in which a professional's license is revoked, suspended, or surrendered, the professional shall, within thirty (30) days of the revocation, suspension, or surrender, do the following:

1. Return his or her license and any license pocket cards to the agency's office;
2. Notify all of his or her clients in writing that his or her license has been revoked, suspended, or surrendered;
3. Notify all clients to make arrangements for other professional services, calling attention to any urgency in seeking the substitution of another licensed professional;
4. Deliver to all clients any papers or property to which they are entitled, or notify the client of a suitable time and place where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers or other property;
5. Refund any part of the fees paid in advance that have not been earned;
6. Keep and maintain a record of the steps taken to accomplish the foregoing;

7. File with the agency a list of all other state, federal, and administrative jurisdictions by which he or she is licensed. Upon such filing, the agency will notify those entitled of the revocation, suspension, or surrender; and
8. The professional shall, within thirty (30) days of revocation, suspension, or surrender of the license, file an affidavit with the agency that he or she has fully complied with the provisions of the order and completely performed the foregoing or provide a full explanation of the reasons for his or her non-compliance. Such affidavit shall also set forth the address where communications may thereafter be directed to the respondent.

#### **I. REINSTATEMENT AFTER SUSPENSION**

1. An order suspending a license may provide that a person desiring reinstatement may file with the **[appropriate person]** a verified petition requesting reinstatement.
2. The petition for reinstatement must set out the following:
  - a. That the individual has fully and promptly complied with the requirements of section VIII (H) of these rules pertaining to the duty of a sanctioned professional;
  - b. That the individual has refrained from practicing in this profession during the period of suspension;
  - c. That the individual's license fee is current or has been tendered to the agency; and
  - d. That the individual has fully complied with any requirements imposed as conditions for reinstatement.
3. Any knowing misstatement of fact may constitute grounds for denial or revocation of reinstatement.
4. Failure to comply with the provisions of sections H7 and H8 of this Rule precludes consideration for reinstatement.
5. No individual will be reinstated unless the **[insert Board or Commission]** approves reinstatement by majority vote.

#### **J. RE-LICENSURE FOR REVOKED OR SURRENDERED LICENSE**

1. No individual who has had his or her license revoked or who has surrendered his or her license will be licensed, except on petition made to the agency.

The application for re-licensure is not allowed until at least **[number of years]** after the revocation or surrender of license took effect.

2. The applicant bears the burden of proof that he is rehabilitated following the revocation or surrender of his license, that he can engage in the conduct authorized by the license without undue risk to the public health, safety, and welfare, and that he is otherwise qualified for the license pursuant to **[cite to agency's organic law]**.

3. The agency may impose any appropriate conditions or limitations on a license to protect the public health, safety, and welfare.

4. The agency may require that the person seeking re-licensure take the licensing examination.